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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 OSCAR TUBIO,

11 Plaintiff,

12 v.

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14 ADIDAS AMERICA, INC., AN
15 OREGON CORPORATION; ADIDAS
16 AG, A GERMAN STOCK
17 CORPORATION; AND DOES 1
18 THROUGH 500, INCLUSIVE,

19 Defendants.

Case No. 2:22-cv-06424-GW (PVCx)

**STIPULATED PROTECTIVE
ORDER**

20 1. INTRODUCTION

21 1.1 PURPOSES AND LIMITATIONS

22 Discovery in this action may involve production of confidential, proprietary,
23 or private information for which special protection from public disclosure and from
24 use for any purpose other than prosecuting this litigation may be warranted.

25 Accordingly, the Parties hereby stipulate to and petition the Court to enter the
26 following Stipulated Protective Order. The Parties acknowledge that this Order
27 does not confer blanket protections on all disclosures or responses to discovery and
28 that the protection it affords from public disclosure and use extends only to the

1 limited information or items that are entitled to confidential treatment under the
2 applicable legal principles. The Parties further acknowledge, as set forth in Section
3 12.3 below, that this Order does not entitle them to file Confidential Information
4 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
5 and the standards that will be applied when a Party seeks permission from the Court
6 to file material under seal.

7 1.2 GOOD CAUSE STATEMENT

8 This copyright action concerns, among other things, the design, marketing,
9 and sale of apparel by Defendant adidas America, Inc. and adidas AG (collectively,
10 “adidas”).

11 Discovery of adidas conducted by Plaintiff Oscar Tubio is likely to include
12 requests for sensitive financial and business information that, if disclosed to the
13 public, would cause adidas significant competitive harm. For example, Mr. Tubio is
14 seeking information not only about adidas’s revenues, but also its internal design
15 procedures and manufacturing processes. Further, Mr. Tubio seeks information
16 about licenses, marketing, and retailer networks that adidas deems proprietary. In
17 connection with its defenses, adidas is likely to produce highly confidential financial
18 information and information regarding its design, marketing, and product-
19 development processes. Further, in order to show its deductible profits from its
20 gross sales figures, adidas likely will be providing sensitive cost information. Such
21 information, if disclosed to the public, would harm adidas and aid its competitors.
22 For these reasons, good cause exists for entry of this Stipulated Protective Order.

23 Likewise, adidas has propounded requests for sensitive information that, if
24 disclosed to the public, would cause Mr. Tubio significant harm. For example,
25 adidas seeks information about Mr. Tubio’s income and the details of his licensing
26 arrangements with third parties.

27 Due to the nature of the requests and the information sought, the Parties are
28 seeking a Protective Order imposing a single tier of confidentiality.

1 2. DEFINITIONS

2 2.1 Action: this pending federal lawsuit.

3 2.2 Challenging Party: a Party or Nonparty that challenges the designation
4 of information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
6 how it is generated, stored, or maintained) or tangible things that qualify for
7 protection under Federal Rule of Civil Procedure 26(c) and as specified above in the
8 Good Cause Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
10 their support staff).

11 2.5 Designating Party: a Party or Nonparty that designates information or
12 items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL.”

14 2.6 Disclosure or Discovery Material: all items or information, regardless
15 of the medium or manner in which it is generated, stored, or maintained (including,
16 among other things, testimony, transcripts, and tangible things), that are produced or
17 generated in disclosures or responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as
20 an expert witness or as a consultant in this action.

21 2.8 House Counsel: attorneys who are employees of a Party to this Action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 2.9 Nonparty: any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a
27 Party to this Action but are retained to represent or advise a Party and have appeared
28

1 in this Action on behalf of that Party or are affiliated with a law firm that has
2 appeared on behalf of that Party, including support staff.

3 2.11 Party: any Party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Nonparty that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation
9 support services (for example, photocopying, videotaping, translating, preparing
10 exhibits or demonstrations, and organizing, storing, or retrieving data in any form or
11 medium) and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above) but also any information copied or extracted
19 from Protected Material; all copies, excerpts, summaries, or compilations of
20 Protected Material; and any testimony, conversations, or presentations by Parties or
21 their Counsel that might reveal Protected Material.

22 Any use of Protected Material at trial will be governed by the orders of the
23 trial judge. This Order does not govern the use of Protected Material at trial.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order will remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition is the later
28 of (1) dismissal of all claims and defenses in this Action, with or without prejudice,

1 or (2) final judgment after the completion and exhaustion of all appeals, rehearings,
2 remands, trials, or reviews of this Action, including the time limits for filing any
3 motions or applications for extension of time under applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Each Party or Nonparty that designates information or items for
6 protection under this Order must take care to limit any such designation to specific
7 material that qualifies under the appropriate standards. The Designating Party must
8 designate for protection only those parts of material, documents, items, or oral or
9 written communications that qualify so that other portions of the material,
10 documents, items, or communications for which protection is not warranted are not
11 swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations
13 that are shown to be clearly unjustified or that have been made for an improper
14 purpose (for example, to unnecessarily encumber the case-development process or
15 to impose unnecessary expenses and burdens on other parties) may expose the
16 Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items it
18 designated for protection do not qualify for that level of protection, that Designating
19 Party must promptly notify all other Parties that it is withdrawing the inapplicable
20 designation.

21 5.2 Except as otherwise provided in this Order, Disclosure or Discovery
22 Material that qualifies for protection under this Order must be clearly so designated
23 before the material is disclosed or produced.

24 Designation in conformity with this Order requires the following:

25 (a) for information in documentary form (for example, paper or electronic
26 documents but excluding transcripts of depositions or other pretrial or trial
27 proceedings), the Producing Party must affix at a minimum the legend
28 "CONFIDENTIAL" to each page that contains Protected Material. If only a portion

1 or portions of the material on a page qualify for protection, the Producing Party
2 must clearly identify the protected portion(s) (for example, by making appropriate
3 markings in the margins).

4 A Party or Nonparty that makes original documents available for inspection
5 need not designate them for protection until after the inspecting Party has indicated
6 which documents it would like copied and produced. During the inspection and
7 before the designation, all material made available for inspection must be treated as
8 “CONFIDENTIAL.” After the inspecting Party has identified the documents it
9 wants copied and produced, the Producing Party must determine which documents,
10 or portions thereof, qualify for protection under this Order. Then, before producing
11 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
12 legend to each page that contains Protected Material. If only a portion or portions of
13 the material on a page qualify for protection, the Producing Party also must clearly
14 identify the protected portion(s) (for example, by making appropriate markings in
15 the margins).

16 (b) for testimony given in depositions, the Designating Party must either
17 identify the Disclosure or Discovery Material that is protected on the record, before
18 the close of the deposition, or within 30 days of receipt of the final deposition
19 transcript, inform the Parties in writing of the Disclosure of Discovery Material that
20 is protected. If the Designating Party chooses the latter option, all deposition
21 testimony is presumptively CONFIDENTIAL until the 30 days have passed.

22 (c) for information produced in some form other than documentary and for
23 any other tangible items, the Producing Party must affix in a prominent place on the
24 exterior of the container or containers in which the information is stored the legend
25 “CONFIDENTIAL.” If only a portion or portions of the information warrant
26 protection, the Producing Party, to the extent practicable, must identify the protected
27 portion(s).
28

1 5.3 If timely corrected, an inadvertent failure to designate qualified
2 information or items does not, standing alone, waive the Designating Party's right to
3 secure protection under this Order for that material. On timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the
5 material is treated in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Any Party or Nonparty may challenge a designation of confidentiality
8 at any time consistent with the Court's scheduling order.

9 6.2 The Challenging Party must initiate the dispute-resolution process (and,
10 if necessary, file a discovery motion) under Local Rule 37.

11 6.3 The burden of persuasion in any such proceeding is on the Designating
12 Party. Frivolous challenges, and those made for an improper purpose (for example,
13 to harass or impose unnecessary expenses and burdens on other parties), may expose
14 the Challenging Party to sanctions. Unless the Designating Party has waived or
15 withdrawn the confidentiality designation, all parties must continue to afford the
16 material in question the level of protection to which it is entitled under the
17 Producing Party's designation until the Court rules on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 A Receiving Party may use Protected Material that is disclosed or
20 produced by another Party or by a Nonparty in connection with this Action only for
21 prosecuting, defending, or attempting to settle this Action. Such Protected Material
22 may be disclosed only to the categories of people and under the conditions described
23 in this Order. When the Action has been terminated, a Receiving Party must comply
24 with the provisions of Section 13 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a manner sufficiently secure to ensure that access is limited to the
27 people authorized under this Order.

1 7.2 Unless otherwise ordered by the Court or permitted in writing by the
2 Designating Party, a Receiving Party may disclose any information or item
3 designated “CONFIDENTIAL” only to the following people:

4 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
5 well as employees of that Outside Counsel of Record to whom it is reasonably
6 necessary to disclose the information for this Action;

7 (b) the officers, directors, and employees (including House Counsel) of
8 the Receiving Party (or, if the Receiving Party is an individual, to such individual)
9 to whom disclosure is reasonably necessary for this Action;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this Action and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the Court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (g) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information;

20 (h) during their depositions, witnesses and attorneys for witnesses to
21 whom disclosure is reasonably necessary, provided that the deposing party requests
22 that the witness sign the form attached as Exhibit A hereto and the witnesses will
23 not be permitted to keep any confidential information unless they sign the form,
24 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
25 transcribed deposition testimony or exhibits to depositions that reveal Protected
26 Material may be separately bound by the court reporter and may not be disclosed to
27 anyone except as permitted under this Order; and
28

1 (i) any mediator or settlement officer, and their supporting personnel,
2 mutually agreed on by any of the Parties engaged in settlement discussions or
3 appointed by the Court.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
5 IN OTHER LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this Action as
8 “CONFIDENTIAL” that Party must

9 (a) promptly notify in writing the Designating Party. Such notification
10 must include a copy of the subpoena or court order unless prohibited by law;

11 (b) promptly notify in writing the party who caused the subpoena or order
12 to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is subject to this Protective Order. Such notification must include
14 a copy of this Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with
18 the subpoena or court order should not produce any information designated in this
19 action as “CONFIDENTIAL” before a determination on the protective-order request
20 by the relevant court unless the Party has obtained the Designating Party’s
21 permission. The Designating Party bears the burden and expense of seeking
22 protection of its Confidential Material, and nothing in these provisions should be
23 construed as authorizing or encouraging a Receiving Party in this Action to disobey
24 a lawful directive from another court.

25 9. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE
26 PRODUCED IN THIS LITIGATION

27 (a) The terms of this Order are applicable to information produced by a
28 Nonparty in this Action and designated as “CONFIDENTIAL.” Such information

1 is protected by the remedies and relief provided by this Order. Nothing in these
2 provisions should be construed as prohibiting a Nonparty from seeking additional
3 protections.

4 (b) In the event that a Party is required by a valid discovery request to
5 produce a Nonparty's Confidential Information in its possession and the Party is
6 subject to an agreement with the Nonparty not to produce the Nonparty's
7 Confidential Information, then the Party must

8 (1) promptly notify in writing the Requesting Party and the Nonparty
9 that some or all of the information requested is subject to a confidentiality
10 agreement with a Nonparty;

11 (2) promptly provide the Nonparty with a copy of this Order, the
12 relevant discovery request(s), and a reasonably specific description of the
13 information requested; and

14 (3) make the information requested available for inspection by the
15 Nonparty, if requested.

16 (c) If the Nonparty fails to seek a protective order within 21 days of
17 receiving the notice and accompanying information, the Receiving Party may
18 produce the Nonparty's Confidential Information responsive to the discovery
19 request. If the Nonparty timely seeks a protective order, the Receiving Party must
20 not produce any information in its possession or control that is subject to the
21 confidentiality agreement with the Nonparty before a ruling on the protective-order
22 request. Absent a court order to the contrary, the Nonparty must bear the burden
23 and expense of seeking protection of its Protected Material.

24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Order, the Receiving Party must immediately notify the Designating Party in writing
28 of the unauthorized disclosures, use its best efforts to retrieve all unauthorized

copies of the Protected Material, inform the person or people to whom unauthorized disclosures were made of the terms of this Order, and ask that person or people to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

12. MISCELLANEOUS

12.1 Nothing in this Order abridges the right of any person to seek its modification by the Court.

12.2 By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

12.3 A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may be filed under seal only pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in Section 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in

1 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
 2 summaries, and any other format reproducing or capturing any of the Protected
 3 Material. Whether the Protected Material is returned or destroyed, the Receiving
 4 Party must submit a written certification to the Producing Party (and, if not the same
 5 person or entity, to the Designating Party) by the 60-day deadline that identifies (by
 6 category, when appropriate) all the Protected Material that was returned or
 7 destroyed and affirms that the Receiving Party has not retained any copies, abstracts,
 8 compilations, summaries, or any other format reproducing or capturing any of the
 9 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
 10 archival copy of all pleadings; motion papers; trial, deposition, and hearing
 11 transcripts; legal memoranda; correspondence; deposition and trial exhibits; expert
 12 reports; attorney work product; and consultant and expert work product even if such
 13 materials contain Protected Material. Any such archival copies that contain or
 14 constitute Protected Material remain subject to this Order as set forth in Section 4
 15 (DURATION).

16 **14. SANCTIONS**

17 Any willful violation of this Order may be punished by civil or criminal
 18 contempt, financial or evidentiary sanctions, reference to disciplinary authorities, or
 19 other appropriate action at the discretion of the Court.

20
 21 GOOD CAUSE HAVING BEEN SHOWN THE PARTIES’ STIPULATION, IT IS
 22 SO ORDERED.

23
 24 DATED: March 17, 2023



25
 26 HON. PEDRO V. CASTILLO
 27 UNITED STATES MAGISTRATE JUDGE
 28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____ [full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the U.S. District Court for the Central District of California on [date] in the case of _____ [insert case name and number]. I agree to comply with and to be bound by all terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment, including contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [full name] of _____ [full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____